

31 AUG 2006

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In re Application of :
Hawkins et al. :
Application No.: 10/524,446 : DECISION
PCT No.: PCT/US03/03605 :
Int. Filing Date: 07 February 2003 :
Priority Date: 07 February 2003 :
Attorney Docket No.: AQU1.PAU.01 :
For: Irrigation Connectors : PETITION

This is in response to the renewed petition under 37 CFR 1.47(a) filed on 13 July 2006.

DISCUSSION

In a decision mailed on 08 May 2006, the petition under 37 CFR 1.47(a) filed on 08 August 2005 was dismissed without prejudice because

Regarding requirement (2), petitioner urges that the absence on the declaration of the signature of joint inventor Wayne Miyasato be excused because he "refuses to sign in an application for patent or cannot be found or reached after diligent effort." With regard to the issue of whether Mr. Miyasato could be found or reached after diligent effort, it is noted that the petition and supporting documents identify two addresses for him, along with "a phone number to which a fax machine was connected." These facts do not suggest that Mr. Miyasato's whereabouts are uncertain within the meaning of 37 CFR 1.47(a), since efforts could readily be made to communicate with him at each of these three venues. It is noted that petitioner refers to "additional addresses" in Torrance, California, but does not recount any efforts undertaken to contact him at more than one Torrance address. The petition also alludes to a "skip trace search" but no documentation of that search or other efforts (such as internet searches or telephone directory searches) has been provided. For these reasons, it would be inappropriate to conclude that Mr. Miyasato "could not be found or reached after diligent effort" at this time.

Regarding the issue of whether Mr. Miyasato has refused to execute the application, ... Counsel states that "an inventor's declaration" was sent to "the fax number listed" and to "each of the additional addresses found in the skip trace," but does not indicate whether correspondence was sent to his last known address, identified by petitioner as a certain address in Anaheim. Moreover, petitioner neither explicitly states that the "inventor's declaration" sent to him was directed to this particular application, nor that a complete copy of this specific application (including specification, claims and drawings) has been sent to him. As such, it would not be appropriate to interpret Mr. Miyasato's failure to return an executed declaration as a refusal to execute within the meaning of 37 CFR 1.47(a) on the basis of the evidence presented.

The declaration signed by Mr. Abrams is defective because he purports to sign for an assignee on behalf of the non-signing inventor, which is appropriate under 37 CFR 1.47(b) but not under 37 CFR 1.47(a). Since this petition was brought under 37 CFR 1.47(a), Mr. Abrams' signature is inappropriate. Moreover, since Mr. Abrams has signed a declaration "on behalf of" the nonsigning inventor, it becomes unclear whether joint inventors Hawkins and Matlock signed the declaration on behalf of Miyasato as well. Therefore, neither of the declaration documents filed on 08 August 2005 are acceptable.

In response, petitioner urges that treatment of the petition under only 37 CFR 1.47(a), as opposed to both 37 CFR 1.47(a) and 1.47(b) simultaneously, is improper. Petitioner's attention is drawn to MPEP 409.03(b), which explains in part that

Filing under 37 CFR 1.47(b) and 35 U.S.C. 118 is permitted only when no inventor is available to make application. These provisions allow a "person" with a demonstrated proprietary interest to make application "on behalf of and as agent for" an inventor who "cannot be found or reached after diligent effort" or who refuses to sign the application oath or declaration. The word "person" has been construed by the U.S. Patent and Trademark Office to include juristic entities, such as a corporation. Where 37 CFR 1.47(a) is available, application cannot be made under 37 CFR 1.47(b).

Accordingly, since at least one joint inventor is available to make the present application, treatment under 37 CFR 47(b), or both 1.47(a) and 1.47(b), would be improper.

Regarding requirement (2), counsel has presented copies of correspondence sent to Mr. Miyasato, including a certified letter sent to him at his last known address along with a copy of the application and declaration; this parcel was returned to sender as "unclaimed," as shown by the submitted photocopy of the envelope. Petitioner has also presented a print-out of an msn White Pages search and a print-out of an Intelius "People Search Report" for Mr. Miyasato. Further, petitioner has provided copies of a letter enclosing a complete copy of the application and a declaration, and sent to three of the four additional addresses listed on the Intelius search, as well as to 841 El Mirador Drive in Fullerton, CA. However, there does not appear to be any showing that petitioner attempted to contact Mr. Miyasato at the remaining Intelius address, "40 E. CTR #207" in Anaheim, CA. Petitioner emphasizes that "the question may be more whether Miyasato can be found at all than whether he refuses to sign." In the absence of a showing of an effort to contact Mr. Miyasato at the "40 E. CTR #207" address, it remains possible that he is in fact located at that address and would be willing to sign the declaration if it were presented to him there along with a copy of the application papers. Therefore, it would not be appropriate to conclude at this time that he is unavailable within the meaning of 37 CFR 1.47(a).

Regarding requirement (4), the declaration filed on 13 July 2006 is defective because it appears to have been compiled by assembling individual sheets from multiple declaration documents. Thus, it is not clear whether each signatory executed a complete copy of the declaration.

DECISION

The petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.

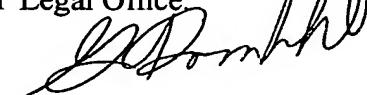
If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47." No additional

petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



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